

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

6 FLIGHTCAR, INC.,  
7 Plaintiff,  
8 vs.  
9 CITY OF MILLBRAE, and DOE 1 through  
0 DOE 50,  
Defendants.

Case No: C 13-5802 SBA

**ORDER DIRECTING PLAINTIFF  
TO FILE RESPONSE TO  
DEFENDANTS' MOTION TO  
DISMISS**

9 CITY OF MILLBRAE, and DOE 1 through  
DOE 50,

## Defendants.

3 On December 23, 2013, Defendant filed a motion to dismiss for failure to state a  
4 claim. Dkt. 4. Under Civil Local Rule 7-3(a), an opposition to a motion must be filed  
5 within fourteen days of the date the motion was filed, and the reply is due seven days  
6 thereafter. As such, Plaintiff's response to the motion should have been filed by no later  
7 than January 6, 2014. To date, Plaintiff has not filed any response to Defendant's motion.

8        This Court's Standing Orders warn that the failure to file a response to a motion may  
9        be construed as consent to the relief sought in the unopposed motion. As such, it is well  
0        within the discretion of the Court to grant Defendant's motion as unopposed. See Fed. R.  
1        Civ. P. 41(b); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Nevertheless, mindful of  
2        its obligation to first consider less drastic alternatives, the Court will afford Plaintiff one  
3        further opportunity to respond to the pending motion. Accordingly,

4 IT IS HEREBY ORDERED THAT Plaintiff shall have until January 20, 2014 to file  
5 and serve its response (i.e., either an opposition or a statement of non-opposition) to  
6 Defendant's Rule 12(b)(6) motion to dismiss. Plaintiff's response shall comply in all  
7 respects with the Federal Rules of Civil Procedure and the Court's Civil Local Rules  
8 including, without limitation, Civil Local Rules 7-3 through 7-5. **PLAINTIFF IS**

1 **WARNED THAT THE FAILURE TO FILE A RESPONSE BY THIS DEADLINE**  
2 **AND/OR TO COMPLY WITH THIS ORDER OR ANY OTHER APPLICABLE**  
3 **PROCEDURAL RULES WILL RESULT IN THE GRANTING OF THE PENDING**  
4 **MOTION AND THE DISMISSAL OF THIS ACTION.** In the event Plaintiff timely  
5 files a response, Defendant may file a reply seven days after the revised deadline for  
6 Plaintiff's response.

7 IT IS SO ORDERED.

8 Dated: 1-13-14

  
9 SAUNDRA BROWN ARMSTRONG  
10 United States District Judge

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